



Special Committee on Criminal Justice Reform

INTERIM REPORT – FALL 2016

A Shift From Re-Entry to Pre-Entry

This Interim Report contains the recommendations of the Special Committee on Criminal Justice Reform that evolved from its hearings on alternatives to pretrial incarceration and pretrial reform. The contained recommendations are short-term goals that will place the City further down the path of achieving the ultimate goal—a focus on “pre-entry” instead of “re-entry.”

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I. Introduction

The Special Committee on Criminal Justice Reform was established on December 10, 2015, by unanimous vote of the City Council of Philadelphia. In January of 2016, City Council President Darrell L. Clarke appointed Councilman Curtis Jones, Jr. (4th District) as Co-Chair of the Committee, along with Keir Bradford-Gray, Chief of the Defender Association of Philadelphia and Kevin J. Bethel, Retired Philadelphia Deputy Police Commissioner. The remaining members of the Special Committee represent a unique combination of stakeholders within the criminal justice system, including:

- **Councilman Kenyatta Johnson** – 2nd District
- **George Mosee** – First Assistant, Philadelphia District Attorney's Office
- **Tariq El-Shabazz, Esq.** – Deputy, Philadelphia District Attorney's Office
- **Ann Schwartzman** – Executive Director, Pennsylvania Prison Society
- **Julie Wertheimer** – Chief of Staff, Criminal Justice – Managing Director's Office
- **Richard McSorley, Esq.** – Deputy Court Administrator, Criminal Trial Division
- **Steven Bizar, Esq.** – President, Philadelphia Bar Foundation
- **Gaetan Alfano** – Chancellor, Philadelphia Bar Association
- **Reverend Adan Mairena** – Ministry Director, West Kensington Ministry at Norris Square
- **Wilfredo Rojas** – Office of Community Justice & Outreach
- **Jason Cosley** – Reentry Programs, Impact Services
- **Richard Podguski** – Bureau of Reentry Coordination, PA Board of Probation and Parole
- **William Cobb** – Representative of Formerly Incarcerated Persons
- **Myron Patterson** – Deputy Police Commissioner, Philadelphia Police Department
- **Dean John Holloway, Esq.** – Quattrone Center for the Fair Administration of Justice
- **Judge Benjamin Lerner** – Deputy Managing Director, Criminal Justice

The Special Committee on Criminal Justice Reform is tasked with conducting public hearings examining Philadelphia's criminal justice system for the impact of current policies, and offering recommended strategies for reform that are in the best interest of public safety and public good, which includes:

- Initiatives to reduce the pipeline to prison
- Strategies to prevent youth involvement in the criminal justice system
- Systemic changes to reduce the City's prison population
- Reducing recidivism by making improvements and enhancements to local re-entry programs
- Instituting evidence based programmatic reviews
- Fiscal sustainability in implementing criminal justice reform

The Special Committee on Criminal Justice Reform began its endeavors by holding meetings on April 15, 2016, April 18, 2016, and May 13, 2016, which focused on developing an

overview of obstacles that the City of Philadelphia faces in making the criminal justice system more just and efficient. After defining the problems, the Committee turned to the immediate task of developing a plan to prevent youths from being involved in the criminal justice system during the summer months. On May 23, 2016, the Special Committee issued its first interim report, entitled “Summer of 2016 – Youth Action Plan,” with recommendations for a plan of action for the City of Philadelphia, which if implemented, will likely reduce youthful interactions with the police and criminal justice system.

During the Summer and Fall of 2016, the Special Committee turned its focus towards improving the criminal justice system at the pre-trial level, with its primary focus being reducing the amount of individuals accused of non-violent offenses that are incarcerated pretrial. In examining pretrial reform, the Special Committee held public hearings on August 1, 2016 and September 12, 2016. Additionally, several members of the Special Committee took a trip to Washington, D.C. on August 2, 2016, to examine the City’s Pretrial Services Agency, which operates on a “no cash bail” system. Members of the Special Committee also attended several informative sessions, including a presentation on new legislation in the State of New Jersey concerning the cash bail system, as well as a forum at the House of Correction speaking to individuals who were being held pretrial.

A. August 1, 2016 – Public Hearing

On August 1, 2016, the Special Committee held its first public hearing concerning criminal justice reform at the pretrial level. At this hearing, members of the Special Committee examined whether low level offenders were being unreasonably held on cash bail and explored the bail practices of other jurisdictions. Members of the Special Committee were informed of the City’s current bail practices, national bail practices and proposals for how the City could foster change in its own system. This information was provided by representatives from the City, bail experts, and affected members of the community—one of those individuals being Joshua Glenn.

“I sat in jail for 18 months, because my family couldn’t afford to pay my bill. The case was eventually dismissed due to lack of evidence.” –Joshua Glenn

Glenn was arrested at the age of 16 for aggravated assault. He was charged as an adult, and his bail was set at \$20,000. Glenn’s family could not afford the 10% (\$2,000) needed to get him out, so he remained imprisoned for 18 months while he awaited his trial. The case was eventually dismissed for lack of evidence. Glenn was delayed in getting his High School diploma due to the time he spent incarcerated awaiting his trial.

At this hearing, members of the Special Committee also heard from a panel of bail experts, including Robin Campbell from the Pretrial Justice Institute, a group of policymakers and justice system stakeholders who come together to advance safe, fair and effective juvenile and adult pretrial practices. Campbell provided testimony on the problem of the country's cash bail system and the growing support nationally for commonsense alternatives. Campbell has studied alternatives to cash bail and pretrial incarceration in cities and states across the country, including Washington, D.C., Kentucky, New Jersey, Colorado, New Mexico, Alaska, Texas, and Allegheny, Pennsylvania.

“All across America, state and local officials are focusing as never before on the pretrial portion of the criminal justice system, which is increasingly recognized as the front door of mass incarceration.” – Robin Campbell, Pretrial Justice Institute

Campbell urged the panel to consider the harmful effects of pretrial incarceration, including the disruption of an accused individual's employment, housing, education, behavioral or medical health, and even the impact it has on child custody matters. Campbell cited research that showed that nearly half of Americans cannot afford a \$400 emergency. Campbell also cited studies showing that pretrial incarceration increases an individual's likelihood of being rearrested and as well as the chance that they will be sentenced to a jail or prison sentence that is longer than someone who was not incarcerated pretrial. Campbell suggested an “empirically-based and locally-validated” risk assessment tool as the most successful alternative to reducing pretrial incarceration of low level offenders, combined with effective oversight of those whose risk is determined to be medium or high.

B. August 2, 2016 – Washington, D.C. Pretrial Services Agency Visit

On August 2, 2016, members of the Special Committee on Criminal Justice Reform visited the Pretrial Services Agency in Washington, D.C. While there, members of the Special Committee met with Cliff Keenan, the Director of the Pretrial Services Agency. Keenan provided a detailed overview of D.C.'s pretrial system, which has a presumption in favor of release—eliminating the use of a cash bail system. The day ended with members of the Special Committee observing bail hearings, as well as meeting with local prosecutors and defense attorneys.

Keenan explained the evolution of D.C.'s pretrial system, which moved away from reliance on cash bail beginning in 1966, after the Federal Bail Reform Act was passed. This law required a presumption in favor of release, and a restriction on the use of monetary bail bonds, which could only be imposed if non-financial release conditions were not sufficient to ensure the defendant's

presence in court. In 1992, D.C.'s City Council expanded upon the use of preventative detention by passing the Bail Reform Amendment Act.

“Over the past five years, while supervising an average of over 17,000 defendants each year, nearly 90% of those released defendants made all of their scheduled court appearances and remained arrest free while in the community pending trial.” –Cliff Keenan, District of Columbia Pretrial Services Agency

Because of D.C.'s emphasis on pretrial services, the City is able to release 90% of individuals who are arrested. The City is able to do so by utilizing a risk assessment tool, with two primary focuses—whether the individual, if released, is likely to fail to appear in court or be re-arrested. Each person arrested is presented to the court with release or detention recommendations based upon the person's demographic information, criminal history and any information concerning substance abuse or mental health. Once the individual's risk is assessed, the Pretrial Services Agency provides services to target and mitigate that specific individual's risk. Services provided include consistent contact with a pretrial officer, notification of upcoming hearing dates, GPS monitoring, drug and alcohol testing and treatment for substance abuse or mental health.

Of those released, only 1% were rearrested for a violent crime while awaiting trial. Additionally, 85% of those arrested remained on pretrial release while awaiting trial, without having their release conditions revoked. D.C.'s jail currently operates at 50% capacity. The District of Columbia is federally funded, and receives \$62 million a year for its pretrial program. Keenan believes that if Philadelphia strips away the “bells and whistles,” the City could afford “pure supervision and risk assessment” for just \$18 a day.

C. September 12, 2016 – Public Hearing

On September 12, 2016, the Special Committee held its second public hearing concerning criminal justice reform at the pretrial level—this time focusing on different methods and alternatives to pretrial incarceration. At this hearing, members of the Special Committee heard from a panel of local researchers on different approaches and their likely impacts, as well as attorneys and administrators from various city agencies on pilot projects and needs that would better assist pretrial defendants.

Members of the Special Committee first heard from Paul Heaton, Academic Research for the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania. The focus of the Quattrone Center is to “find systems, approaches, and ways to improve the criminal justice system so as to prevent errors and to improve fairness.” Heaton and his fellow researchers

studied the impact of Philadelphia’s current pretrial practices, and the likely impacts of changes to those practices. The results of the study done in Philadelphia, which was comprised of seven years worth of criminal justice data, showed that individuals who were detained pretrial were 12% more likely to plead guilty and would receive a sentence twice as long as someone who was not detained while awaiting trial, and that individuals who are detained pretrial are at greater risk of offending again.

Heaton recommended specific solutions to reducing the City’s level of individuals incarcerated while awaiting trial, including electronic monitoring, risk assessment tools, better quality defense counsel at bail hearings, a reminder system for “organizationally challenged” defendants to keep track of their court hearings and liberation of release on recognizance for low-risk offenders. Heaton’s data suggested there would be substantial monetary benefits to the City, as reliance on alternatives to cash bail would produce less incarceration at the pretrial level, and ultimately correlate to more lenient sentences from the court, which would result in less spent on incarceration of post-trial defendants. Heaton urged those tasked with considering these strategies to pay attention to detail in the implementation, making sure that it is conformed to best practices.

“What this new wave of academic research tells us is that there can be some great benefits for the City to improving our system for pretrial detention, including the possibility of reducing, perhaps substantially, our expenditures on jail and incarceration.” –Paul Heaton, Quattrone Center for the Fair Administration of Justice

At the September 12th hearing, members of the Special Committee also received a presentation from John Hogan and Adam Schlager of GEO Reentry Group. GEO operates 85 day reporting centers across the country, nine of which are in Pennsylvania. Day reporting centers have evolved from merely a place where individuals could come to check-in, to being full service treatment facilities. GEO’s program offers daily check-in, supervision, substance abuse testing and counseling, as well as behavioral changing strategies that aim to reduce criminogenic

“One of the key principles of effective intervention is engaging the community for support.” –John Hogan, GEO Reentry Group

behavior, and thus reduce recidivism. Hogan and Schlager explained that GEO’s services are based on academic research on effective intervention, including a risk-needs principle, to determine who the individual is and what treatment and services are needed based on that specific individual’s risk, and increasing positive reinforcement geared towards good works “to cement the skill of behavior change.”

GEO Reentry Group involves the community in their treatment services by recruiting employees locally and by bringing in members of the community to present on services available to an individual once their services at the day reporting center are complete. Hogan and Schlager reassured members of the Special Committee that relying on day reporting centers as an alternative to pretrial incarceration could bring substantial cost savings to the City, costing as low as \$20-25 per day, per individual, depending on which services are offered. GEO has seen between 40%-60% in reduction of recidivism in cities which use their facilities.

D. October 7, 2016 – New Jersey Pretrial Presentation

On October 7, 2016, members of the Special Committee were invited to a panel presentation in City Hall's Law Library, concerning New Jersey's recent trend toward bail reform. Panelists included Spurgeon Kennedy - the Chief of Planning and Strategic Initiatives Office of the Administrative Office of the United States Courts, Cynthia Jones - Professor at American University Washington College of Law, and Roseanne Scotti - New Jersey State Director for the Drug Policy Alliance. The panelists spoke about the advocacy campaign that successfully passed bail reform in New Jersey, and provided a greater base of knowledge on how other jurisdictions are dealing with criminal justice reform issues. The panelists also discussed the relationship between bail reform and racial justice.

In January of 2017, comprehensive bail reform legislation will go into effect in the State of New Jersey. The state's new bail reform law: (1) prioritizes non-monetary release options; (2) requires use of a validated risk assessment before a bail hearing; (3) establishes a pretrial services agency within each county that will monitor individuals awaiting trial; (4) allows for the pretrial detention of truly dangerous individuals; and (5) guarantees timelines for speedy trials. The new law does not get rid of cash bail entirely, but mandates that cash bail be utilized as the last option in bail decisions. The state will have intensive trainings for judges on how to use the recommendations of the risk assessment tool. The entire state of New Jersey received \$22 million to implement this model.

“You cannot put a price tag on the cost of justice.”
–Cynthia Jones, American University Washington College of Law

E. October 17, 2016 – Forum at House of Correction

On October 17, 2016, several members of the Special Committee attended a private panel discussion at House of Correction on State Road. Members in attendance spoke with eight selected inmates, who were currently being held on bail, or on a detainer, while awaiting a hearing. The inmates shared stories about how being detained while awaiting their hearing affected their lives and that of their families.

“Here I am sitting in prison getting audited, because I can’t pay a tax bill, because I am locked up.” –Darnell Wright

One of the panelists was Darnell Wright, who was arrested two months prior after a domestic violence incident. Wright’s bail was originally set at \$13,000. After several postponements in Wright’s preliminary hearing, the Assistant District Attorney assigned to his case voluntarily reduced the charges to misdemeanors. At that hearing, Wright’s attorney asked that he be able to sign his own bond and be released while awaiting trial. That request was denied, but Wright’s bail was reduced to \$6,500. Even with the reduction, Wright cannot afford to post his bail. Before being arrested, Wright owned his own business—a tire shop. When asked what he lost by being incarcerated pretrial, Wright responded “my mother.” Wright’s mother died while he was in prison, and he was not able to be released to attend her funeral.

Another panelist was Eugene Tinsalay, who had been at House of Corrections for a month while awaiting trial. Tinsalay is a first time offender, who is charged with Burglary. His bail was set at \$30,000. Due to his incarceration status, Tinsalay lost his apartment and his new job managing a popular restaurant in Chestnut Hill. While Tinsalay has the support of family, it would be an extreme hardship for them to come up with the money required for his release. Tinsalay admitted that he has mental health issues that started after he left the military, and that he did not understand his rights during the bail hearing.

II. Purpose of Report

This Interim Report contains the recommendations of the Special Committee on Criminal Justice Reform that evolved from its hearings on alternatives to pretrial incarceration and pretrial reform. Currently, 26% of the City’s jail population is made up of individuals who are awaiting trial. It is the ultimate goal of the Special Committee to minimize the amount of offenders who are incarcerated pretrial, by increasing the capacity of pretrial services. The below recommendations are short-term goals that will place the City further down the path of achieving the ultimate goal—a focus on “pre-entry” instead of “re-entry.” This shift will achieve the following:

1. Reduce reliance on a cash bail system for non-violent or low-level offenders.
2. Provide offenders with greater services and treatment, to reduce the likelihood of recidivism.
3. Reduce strain on prosecutors, defense attorneys and the courts by reducing the caseload and increasing time for trial preparation.
4. Reduce strain on the prison system by reducing the prison population.
5. Reduce the strain on resources and allocating them to alternative programs.
6. Provide greater support to families, by helping to mitigate the unforeseen consequences of jail time.
7. Increase public safety and public trust.

III. Committee Recommendations

Recommendation: The City should acquire more electronic monitoring units for use as an alternative to pretrial incarceration.

Philadelphia is engaged in a significant criminal justice reform effort aimed at reducing the rate of pretrial incarceration while preserving public safety. One viable alternative to pretrial incarceration that is being explored is electronic monitoring (EM). However, the present electronic monitoring equipment utilized by the Pretrial Services Department of the First Judicial District is outdated and must be replaced. This 15-year old system utilizes landline technology and runs off of outdated software that often encounters glitches. In addition to the acquisition of more updated technology, more EM units need to be acquired to supervise all of the individuals who are eligible for pretrial release on EM.

The impact of updating Philadelphia's EM technology is significant. With the new EM technology, individuals will spend less time waiting in jail to complete the set-up process. Furthermore, defendants who were previously ineligible for release because they did not have access to a landline could now be released on a wireless EM unit.

There are currently approximately 294 pretrial defendants on EM, and 548 defendants total. As a result of the MacArthur Grant, the First Judicial District of Pennsylvania has acquired the necessary resources to begin the conversion from a landline-based system to a wireless system for EM, and to acquire a modest number of additional units. The EM conversion includes a new server, a redundant server at a geographically separate location, appropriately configured computers, wireless EM units, updated land-line units, and annual software, technical support, and licensing. Furthermore, 700 wireless and 100 landline units will be purchased using grant funds. This increases the number of units by roughly 22%, and ensures that better and more accurate information about EM users is readily available to pretrial services.

However, additional resources are needed on an annual basis to maintain these new units and to run the more up-to-date system. An annual subscription to the cellular service is required at the cost of \$166,075 per year. Furthermore, to maintain the 100 landline units on the new system, an annual maintenance fee of \$8,500 is required. Lastly, two additional staff members are needed within the EM Field Team of the Pretrial Services Department to supervise the additional individuals who will be released on EM. The annual salary for these two additional staff members is \$64,892 (\$32,446 each).

Recommendation: The City should increase funding for additional pretrial services staff, which is necessary to provide greater services to individuals who will be released while awaiting trial.

Philadelphia currently has a limited range of pretrial release options for individuals awaiting trial. While the criminal justice partners have made great progress in expanding diversion options for individuals who are typically released without bail, and are currently exploring a pre-arrest diversion pilot program, cash bail remains a significant factor in other cases. With 60% individuals arraigned receiving cash bail in Philadelphia, the current pretrial release conditions and corresponding pretrial staff are not robust enough to effectively serve those who could be safely supervised in the community awaiting trial.

The First Judicial District of Pennsylvania, in collaboration with Philadelphia's other criminal justice partner agencies, is in the process of a significant pretrial reform to establish a robust range of alternatives to pretrial incarceration. This effort is being funded, in part, by the MacArthur Foundation Safety and Justice Challenge. However, in order to more effectively supervise individuals in the community, the Pretrial Services Department requires additional staffing resources that exceed the resources available through the MacArthur Grant.

The Pretrial Services Department is currently being restructured to supervise an increased number of lower risk offenders who can be released to the community pretrial, providing more hands-on services and increasing accountability for compliance. As part of this effort, Pretrial Services will implement a more robust range of conditions for supervision, including but not limited to, release on recognizance, court reminders, remote or in-person reporting, and electronic monitoring.

This effort to reduce unnecessary pretrial incarceration while maintaining public safety will have the immediate effect of decreasing the number of people who spend time in jail awaiting trial. In the long term, it will also reduce the damaging collateral consequences of incarceration and future recidivism.

However, this significant endeavor requires additional staffing in order to be successful. Seven new pretrial officers will need to be hired to work with individuals who are released pretrial, at a cost of \$261,996 per year (\$37,428 per officer). As mentioned above, two additional EM Field Team staff are needed within the EM unit of the Pretrial Services Department to supervise the additional individuals who will be released on EM. The annual salary for these two additional staff members is \$64,892 (\$32,446 each).

Recommendation: The City should develop a tool to be used in bail determinations, to reduce monetary bail being assigned to non-violent or low-level offenders.

In an effort to move away from the reliance on cash bail while preserving public safety, Philadelphia is engaged in a pretrial reform effort that employs evidenced-based practices. One such practice that has been shown to be effective in many jurisdictions is the use of an empirically-based and locally-validated risk assessment tool, in conjunction with the wide range of community-based supervision options referenced above. As part of the pretrial reform effort in Philadelphia, the First Judicial District, in collaboration with the other criminal justice partner agencies, will implement a new pretrial risk assessment tool.

Although the contract has not yet been finalized, the First Judicial District plans to work with researchers at the University of Pennsylvania to construct a pretrial tool designed specifically for Philadelphia using historical data. Since the tool has not yet been designed, specifics about the model are currently unavailable.

During prior public hearings, members of the Special Committee raised concerns that the data used in a risk assessment tool's calculations may be inherently biased, because of the decades of disparate impact and racial imbalance within the criminal justice system. A major area of concern is the use of factors that may correlate with race or socioeconomic status—such as an accused individual's zip code. At the public hearing on September 12, 2016, Dr. Richard Berk, a researcher from the University of Pennsylvania, suggested that such factors could be removed, but that it would likely sacrifice the accuracy of the calculation as a result.

Stakeholders and decision-makers are committed to developing a tool that promotes both fairness and accuracy. As such, significant efforts will be taken to limit the impact of race and ethnicity in the tool's development and implementation, to reduce bias and promote principles of fundamental fairness. The implementation of the risk tool will be a gradual process in which risk forecasts are closely monitored to ensure the tool is functioning properly. The researchers, in conjunction with the First Judicial District's research staff, plan to conduct ongoing evaluations of the pretrial risk tool's performance.

Philadelphia's criminal justice partner agencies fully recognize that the risk assessment is only one piece of information that must be taken into consideration as part of the pretrial release decision. The Defender Association of Philadelphia and the Philadelphia District Attorney's Office will present additional information to be considered at preliminary arraignment. In order to enhance the types of information that is presented, the Defender Association plans to pilot a new interviewing program that provides an earlier opportunity to speak with their clients and gather information that supports an argument for release. This program, in conjunction with the

risk assessment tool, will ensure that better and more accurate information is available to decision-makers when they consider pretrial release and community safety going forward.

Recommendation: The City should conduct a study on the feasibility of opening three day reporting centers by FY-19 that will offer services to pretrial defendants as an alternative to pretrial incarceration.

When faced with exploring alternatives for pretrial incarceration, members of the Special Committee on Criminal Justice Reform were often presented with the idea of opening a day reporting center that could be utilized for non-violent, low-level offenders who would otherwise have been incarcerated on an amount of bail that they could not afford while awaiting trial. Day reporting centers serve to be one of the most viable alternatives to pretrial incarceration, as they not only serve as a check-in place to ensure an individual remains in the community while awaiting trial, but also serves as a community-based treatment center, where individuals can find the resources necessary to become a more productive member of society.

It is recommended that the City conduct a study on the feasibility of opening three day reporting centers by FY-19. In furtherance of this study, the City should commission an individual tasked with providing a specific cost analysis for these centers, the services that will be provided within them and the hiring of staff to administer services. The feasibility study should include visits to other jurisdictions that have already implemented successful day reporting centers, as well as a review of data concerning daily costs and recidivism rates in those jurisdictions.

Once the feasibility study is complete, a report concluding the findings of the study should be issued to the Council of the City of Philadelphia. This report should include a “community-based plan” for the operation of these centers to be within three select districts and service individuals who come from or will be returning to that district. This report should also include strategies to develop a “good neighbor policy” for community interaction with the development and implementation of any day reporting centers within the City, in order to alleviate any fears or concerns of the public.

IV. Next Steps

Councilman Jones will submit a Resolution to the City Council of Philadelphia requesting that the Council support and implement the recommendations of the Special Committee on Criminal Justice Reform. It is expected that City Council will support this Committee’s work, and that they will pass the Resolution at their meeting of December 1, 2016. Once the Resolution is enacted into law by City Council, members of Council will work to incorporate the recommendations into the Annual Operating Budget and into the plans of the agencies under the Mayor.